

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LARRY BRACEY,

Plaintiff,

v.

JAMES GRONDIN, C.O. HUNT,
THOMAS TAYLOR, C.O. MURRAY,
C.O. KOELLER and JOLINDA WATERMAN,

Defendants.

ORDER

10-cv-287-bbc

In this civil action, plaintiff Larry Bracey, a prisoner at the Wisconsin Secure Program Facility, is proceeding on claims that defendants James Grondin, C.O. Hunt, Thomas Taylor, C.O. Murray, C.O. Koeller and Jolinda Waterman violated his rights under the Constitution and state law. On May 2, 2011, defendants filed an expert witness disclosure, dkt. #35, stating that defendant Waterman would testify about the care and treatment she provided plaintiff and about the standard of care for evaluation and treatment of injuries similar to those suffered by plaintiff. Also, defendants disclosed that Health Services Manager Mary Miller may testify as an expert regarding the policies and procedures of the Health Services Unit at the Wisconsin Secure Program Facility.

Now before the court is plaintiff's motion to exclude Miller's testimony and to limit defendant Waterman to testifying only about what she actually did. Dkt. #47. Plaintiff contends that Waterman is not qualified to give testimony regarding the standard of care for injuries similar to his because she is not a doctor. Additionally, he contends that neither Waterman nor Miller should be allowed to testify as experts at all because neither submitted an expert report as required by Fed. R. Civ. P. 26(a)(2).

I will deny plaintiff's motion. Plaintiff is proceeding on a claim that defendant Waterman provided him negligent treatment in violation of state law. Because Waterman is a registered nurse with experience providing treatment, she is qualified to testify regarding the standard of care that applies to nurses. Additionally, neither Waterman nor Miller were required to submit expert reports. Under Fed. R. Civ. P. 26(a)(2)(B), witnesses must provide an expert report "if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony." Defendants' disclosure states that neither of these conditions applies to Waterman nor Miller. Expert disclosures that do not include a written report must disclose "the subject matter on which the witness is expected to present evidence" and "a summary of the facts and opinions to which the witness is expected to testify." Fed. R. Civ. P. 26(a)(2)(C). Defendants' expert disclosure satisfies these requirements.

ORDER

IT IS ORDERED that plaintiff Larry Bracey's "motion for an order denying defendants' proposed expert witnesses and expert testimony from witness Waterman," dkt. #47, is DENIED.

Entered this 14th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge